

JENS SAMUELSEN AND B. OLSEN, OWNERS OF THE  
NORWEGIAN BARK THELKA, v. UNITED STATES

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COMMUNICATION

FROM THE

PRESIDENT OF THE UNITED STATES

TRANSMITTING

RECORD OF JUDGMENTS RENDERED AGAINST THE GOVERNMENT  
BY THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN  
DISTRICT OF NEW YORK, AS SUBMITTED BY THE ATTORNEY  
GENERAL THROUGH THE SECRETARY OF THE TREASURY  
UNDER THE UNITED STATES SHIPPING BOARD IN FAVOR OF  
JENS SAMUELSEN AND B. OLSEN (OWNERS OF THE NORWEGIAN  
BARK THELKA), TOGETHER WITH A LETTER FROM THE  
DIRECTOR OF THE BUREAU OF THE BUDGET

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FEBRUARY 25, 1925.—Read; referred to the Committee on Appropriations, and  
ordered to be printed

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THE WHITE HOUSE,  
Washington, February 25, 1925.

The PRESIDENT OF THE SENATE.

SIR: I have the honor to transmit herewith for the consideration of  
Congress, in accordance with the provisions contained in the deficiency  
act of April 27, 1904 (33 Stat., 422), a record of judgment rendered  
against the Government by the United States District Court for the  
Southern District of New York, as submitted by the Attorney Gen-  
eral through the Secretary of the Treasury, as follows:

UNDER UNITED STATES SHIPPING BOARD

Final decree on mandate rendered by United States District Court for the  
Southern District of New York, on January 13, 1925, in favor of Jens Samuel-  
sen and B. Olsen (owners of Norwegian bark *Thelka*) against the United  
States of America (steamship *F. J. Luckenbach*), amount of judgment, \$154,-  
837.96, together with interest thereon at 5 per cent per annum from February  
5, 1923, until date of judgment, January 13, 1925, and costs, \$15,064.47, amount-  
ing in all to \$169,902.43, together with further interest at 5 per cent per annum  
from date of entry, January 13, 1925, until paid, the rate of interest above  
specified being in accordance with arrangement between the proctors for the  
bark *Thelka* and the United States Shipping Board Emergency Fleet Cor-  
poration, as shown by inclosed papers.

The necessity for the appropriation asked is explained in the letter of the Director of the Bureau of the Budget, transmitted herewith, in whose conclusions and observations thereon I concur.

Respectfully,

CALVIN COOLIDGE.

BUREAU OF THE BUDGET,  
*Washington, February 25, 1925.*

SIR: I have the honor to submit herewith for your consideration, and upon your approval for transmission to Congress, in accordance with the provisions contained in the deficiency act of April 27, 1904 (33 Stat. 422), a record of judgment rendered against the Government by the United States District Court for the Southern District of New York, as submitted by the Attorney General through the Secretary of the Treasury, as follows:

UNDER UNITED STATES SHIPPING BOARD

Final decree on mandate rendered by United States District Court for the Southern District of New York, on January 13, 1925, in favor of Jens Samuelson and B. Olsen (owners of Norwegian bark *Thelka*) against the United States of America (steamship *F. J. Luckenbach*), amount of judgment \$154,837.96, together with interest thereon at 5 per cent per annum from February 5, 1923, until date of judgment, January 13, 1925, and costs, \$15,064.47, amounting in all to \$169,902.43, together with further interest at 5 per cent per annum from date of entry, January 13, 1925, until paid, the rate of interest above specified being in accordance with arrangement between the proctors for the bark *Thelka* and the United States Shipping Board Emergency Fleet Corporation, as shown by inclosed papers.

For the payment of this judgment there is required an appropriation of \$169,902.43, including costs, together with such additional sum as may be necessary to pay interest thereon at the rate of 5 per cent per annum from date of entry, January 13, 1925, until paid, with the proviso that this judgment shall not be paid until the right of appeal shall have expired.

Since the foregoing is an obligation of the Government, lawfully imposed, and which (subject to the reserved right of appeal) must be paid, and because it could not have been anticipated in the regular appropriation acts, an appropriation for that purpose is necessary at this time.

There are transmitted herewith letters of Acting Attorney General and president of the United States Shipping Board Emergency Fleet Corporation, and copy of decision of Justice Holmes, of the Supreme Court of the United States.

Very respectfully,

H. M. LORD,  
*Director of the Bureau of the Budget.*

The PRESIDENT.

## THELKA-LUCKENBACH COLLISION

OFFICE OF THE ATTORNEY GENERAL,  
Washington, D. C., February 21, 1925.

Hon. ANDREW W. MELLON,

*Secretary of the Treasury, Washington, D. C.*

MY DEAR MR. SECRETARY: At the request of the United States Shipping Board I am transmitting herewith the report of L. C. Palmer, president of the United States Shipping Board Emergency Fleet Corporation, addressed to the Director of the Budget, asking that the judgment entered be certified in the usual course for payment. The inclosed letter of the president of the Fleet Corporation reviews the litigation. A certified copy of the final decree entered by the United States District Court for the Southern District of New York is also inclosed. May I ask that the decree be certified for payment in the usual way.

The adjustment in the rate of interest has been made upon the special understanding that the decree will be certified immediately and included under the present deficiency bill providing for payment of judgments against the United States. In order to have the benefit of this agreement, it is important for the decree to be certified promptly and to be included under the pending deficiency bill.

Respectfully,

JAMES M. BECK,  
*Acting Attorney General.*

(Inclosures.)

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FLEET CORPORATION,  
NEW NAVY BUILDING,  
Washington, D. C., February 19, 1925.

The DIRECTOR OF THE BUDGET,

*Washington, D. C.*

DEAR SIR: There is transmitted herewith judgment against the United States and in favor of Jens Samuelson and B. Olsen, as owners of the bark *Thelka*, in the sum of \$154,837.96, together with interest up to January 13, 1925, and costs, amounting to \$18,032.25, amounting in all to the sum of \$172,870.21, with interest at 6 per cent from January 13, 1925, until paid, with the request that same be transmitted to Congress to be included in the urgent deficiencies appropriation bill which is to be passed at the latter part of this session of Congress.

The facts briefly are that the steamship *F. J. Luckenbach*, owned by the Luckenbach Steamship Co. (Inc.), was requisitioned by the United States Shipping Board during the war and was allocated by the board to the Navy Department, and at the time of the collision named hereafter was manned by the Navy and was carrying war supplies to Europe for the War Department.

The *F. J. Luckenbach* and bark *Thelka* collided off Block Island, N. Y., on February 13, 1918, as a result of which both vessels were damaged. The *Luckenbach's* officers and crew testified that the *Thelka* was not displaying proper navigation lights and was therefore at fault and liable for the damages to the *Luckenbach*. At the

request of the United States Shipping Board libel was filed in the name of the Luckenbach Steamship Co. (Inc.), the record owners, against the bark *Thelka* on May 13, 1918, in the United States District Court for the Southern District of New York and bond obtained to protect the United States Government. The above owners of the *Thelka* filed a cross libel for damages to their vessel. On motion of the proctors for the *Thelka*, the court ordered the suit of the Government stayed until the Emergency Fleet Corporation gave bond in the sum of \$130,000. The Government objected to the jurisdiction of court over the cross libel of the *Thelka* and this question together with the question as to the liability for damages proceeded to trial.

The district court rendered written decision overruling the Government's objections to the court's jurisdiction of the cross libel and oral opinion holding the *F. J. Luckenbach* solely liable for the damages to the *Thelka*, on January 15, 1923. (286 Fed. 188.)

The Government took an appeal on both questions to the Circuit Court of Appeals. This court affirmed the lower court's decision holding the *F. J. Luckenbach* solely liable for the damages and certified the question as to the court's jurisdiction over the cross libel to the United States Supreme Court for decision. The United States Supreme Court rendered decision sustaining the lower court in holding that the court had jurisdiction over the cross libel and dismissing the objections of the United States. Copy of decision attached. Final decree has now been entered against the United States of America in the sum stated above.

The libel of the Luckenbach Steamship Co. on behalf of itself and the Government was filed under the construction placed on the law existing at the time of the collision that a maritime lien attached to the *F. J. Luckenbach* for the collision damages which, although unenforceable as long as the vessel remained a public vessel and immune from arrest, would become enforceable just as soon as the vessel was returned to the Luckenbach Steamship Co. where it would be subject to libel. In the latter case, the board or Fleet Corporation would have become liable to the Luckenbach Steamship Co. for any damages it was required to pay, under the requisition charter by which the Government took the vessel which provided in effect that all collision damages were to be paid by the board or Fleet Corporation. The United States Supreme Court in the case of the *Western Maid* rendered on January 3, 1922, 257 U. S. 419, held that a maritime lien does not attach to a public vessel for which can be enforced when the vessel is returned to private service and subject to suit. The latter decision has thrown an element of doubt over the above proceedings.

There is a serious doubt whether any department or branch of the Government has authority to pay this judgment out of its appropriation. At the time of the collision the *F. J. Luckenbach* was being operated by the War Department and collision damages were for its account. This department has no appropriation available to pay this judgment, which is based on a tort claim. Since the collision damages are for the account of the War Department, there is a serious doubt whether the Emergency Fleet Corporation has



authority to pay the judgment out of its funds, notwithstanding the fact that it requisitioned the vessel from the Luckenbach Steamship Co. for the Government and the further fact that it gave its own bond in the sum of \$130,000.

Under these circumstances it is felt that the judgment should be submitted to Congress with the request that same be paid by special appropriation. A bill has been introduced in the House of Representatives authorizing the payment of the judgment—H. R. 9142, Sixty-eighth Congress.

The Fleet Corporation has questioned the allowance by the court of 6 per cent interest instead of 4 per cent as allowed by the suits in admiralty act of March 9, 1920. Messrs. Haight, Smith, Griffin & Deming, proctors for the bark *Thekla*, in consideration of the Government waiving an appeal on this question, have agreed to accept 5 per cent interest on the judgment from the date of the original decree, which is February 5, 1923, until paid, provided the judgment is appropriated for at this session of Congress. Therefore the appropriation act should authorize the payment of 5 per cent interest from February 5, 1923, until paid instead of 6 per cent as provided in the decree.

Under the latter arrangement the exact sum to be appropriated for is the original decree of February 5, 1923, in the sum of \$154,837.96, together with interest at 5 per cent from the latter date until January 13, 1925, and costs, amounting in all to \$169,902.43, with 5 per cent interest from January 13, 1925, until paid.

The urgency of the judgment being appropriated for in the urgent deficiencies appropriation act at the latter part of this session of Congress, is on account of the large amount involved, the fact that the judgment is bearing interest and the further fact that the judgment creditor may take steps to force the Fleet Corporation to pay same.

Respectfully,

L. C. PALMER.

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[Supreme Court of the United States. No. 258.—October Term, 1924]

Luckenbach Steamship Co. (Inc.) and the United States of America  
*vs.* Norwegian Barque *Thekla*, her tackle, etc. On certificate from  
the United States Circuit Court of Appeals for the Second Circuit  
December 1, 1924

Mr. Justice Holmes delivered the opinion of the court.

This case comes here upon a certificate from the circuit court of appeals for the second circuit, stating more at length the following facts: The Luckenbach Steamship Co. on behalf of itself and the other owners libeled the bark *Thekla* in admiralty for a collision with the steamship *F. J. Luckenbach*. The owners of the *Thekla* moved under the old fifty-third admiralty rule for a stay until the libellant should give security to respond in damages as claimed in the cross libel, and filed a claim, stipulation for value, an answer and a cross bill against the steamer. On October 7, 1918, the motion was granted and the libel and cross libel were con-

solidated and proceeded as one cause. On June 4, 1919, the United States was made a party libellant upon its motion and stood on the steamship company's libel. It filed a claim "without submitting itself to the jurisdiction" of the court, alleging possession and ownership at the time when the libel was filed. Thereupon a stipulation executed by the United States Shipping Board Emergency Fleet Corporation was filed, which recited that the *F. J. Luckenbach* was under requisition charter to, and in the possession of the United States, claimant, at the time of the collision; that the liability, if any, was that of the United States, acting through the corporation, the operator of it; and that the corporation agreed in case of default on the part of the claimant that execution should issue against its chattels and lands in the sum of \$130,000. The condition was that the claimant and corporation should abide by all orders of the court and pay the amount awarded by the final decree. On October 3, 1919, the steamship company on behalf of itself and other owners, excepted to the cross libel on the ground that the steamship being under charter to the United States the matters alleged in the cross libel were not within the jurisdiction of the court. At the trial it appeared that the United States was owner *pro hac vice*, as alleged, using the vessel for war service, and that the *Luckenbach* alone was in fault, a finding affirmed by the Circuit Court of Appeals. A decree was entered against the claimant and stipulator for the damages, \$120,619.71, with interest and costs.

The first question certified is: Was the district court empowered by law to render the decree entered? In answer the Government relies upon the proposition established by *The Western Maid*, 257 U. S. 419, that the collision inflicted no legal wrong upon the *Thekla*, and the further proposition that generally speaking a claim that would not constitute a cause of action against the sovereign can not be asserted as a counterclaim; *Illinois Central R. R. Co. v. State Public Utilities Commission of Illinois*, 245 U. S. 493, 504, 505; see also *Nassau Smelting & Refining Works v. United States*, November 17, 1924; and that a cross libel is governed by the same rule. *Washington-Southern Navigation Co. v. Baltimore & Philadelphia Steamboat Co.*, 263 U. S. 629.

We do not qualify the foregoing decisions in any way, but nevertheless are of opinion that the district court had power to enter a decree for damages. When the United States comes into court to assert a claim it so far takes the position of a private suitor as to agree by implication that justice may be done with regard to the subject matter. The absence of legal liability in a case where but for its sovereignty it would be liable does not destroy the justice of the claim against it. When the question concerns what would be paramount claims against a vessel libeled by the United States were the vessel in other hands, the moral right of the claimant is recognized. *The Western Maid*, 257 U. S. 419, 433, 434. *The Siren*, 7 Wall. 152. *The Athol*, 1 Wm. Rob. 374, 382. The doubt in this case arises not from the absence of a maritime lien, but from the fact that the counterclaim is not against the *Thekla* libeled by the United States, but for affirmative relief against a different vessel, the *F. J. Luckenbach*. There certainly is a strong argument for

regarding this claim as standing no better than those dealt with in the cases cited by the Government. But we are of opinion that this is to construe the submission of the United States too narrowly. A collision involves two vessels. The trial of such cases in the ordinary course is upon libel and cross libel, consolidated under authority of statute. Rev. Stats. sec. 921. *The North Star*, 106 U. S. 17. If both parties were in fault the entire damage would be divided equally between them, and it could not be argued that the United States could avoid the consequences of the rule although the damage to the other vessel might bar its recovering anything. This shows that the subject matter is the collision, rather than the vessel first libeled. *Bowker v. United States*, 186 U. S. 135, 139. The libel in such a case is like a bill for an account, which imports an offer to pay the balance if it should turn out against the party bringing the bill. *Colombian Government v. Rothschild*, 1 Sim. 94, 103. *Goldthwait v. Day*, 149 Mass. 185, 187.

The reasons that have prevailed against creating a Government liability in tort do not apply to a case like this, and on the other hand the reasons are strong for not obstructing the application of natural justice against the Government by technical formulas when justice can be done without endangering any public interest. As has been said in other cases the question of damages to the colliding vessel necessarily arose and it is reasonable for the court to proceed to the determination of all the questions legitimately involved, even when it results in a judgment for damages against the United States. *The Nuestra Señora de Regla*, 108 U. S. 92. *The Paquete Habana*, 189 U. S. 453, 465, 466. We gather that our conclusion accords with the opinion of the English courts. *The Newbattle*, 10 P. D. 33. *The Tervaete* [1922] 259, 272. It is said that there is no statute by which the Government accepted this liability. It joined in the suit, and that carried with it the acceptance of whatever liability the courts may decide to be reasonably incident to that act.

It follows from what has been said, without the need of going further, that the stipulation ordered before the United States made itself a party, is valid, and that interest and costs can be recovered from the Fleet Corporation. See *Sloan Shipyards Corporation v. United States Shipping Board Emergency Fleet Corporation*, 258 U. S. 549. Interest was allowed against the United States in *Nuestra Señora de Regla* and *The Paquete Habana*, *supra*, and interest and costs by the judgment affirmed in *Porto Rico v. Ramos*, 232 U. S. 627.

Answer to question 1: Yes.

A true copy.

Test:

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Clerk, Supreme Court, U. S.

At a stated term of the United States District Court held in and for the Southern District of New York in the United States Court and Post Office Building, Borough of Manhattan, city of New York, on the 13th day of January, 1925.

Present: Hon. Julian W. Mack, circuit judge.

Luckenbach Steamship Co. (Inc.), on behalf of itself and the other owners of the steamship *F. J. Luckenbach*, and the United States of America, libelants, *v.* The Norwegian bark *Thekla*, her tackle, etc. Jens Samuelson and B. Olsen, cross libelants, *v.* steamship *F. J. Luckenbach*.

An order having been duly made and entered herein on or about August 23, 1923, severing the libelant United States of America from its colibellant Luckenbach Steamship Co., for purposes of appeal herein, and the libelant, United States of America, having appealed to the United States Circuit Court of Appeals for the Second Circuit from the final decree dated January 31, 1923, and entered herein on February 5, 1923, and amended by order dated February 9, 1923, and said appeal having been duly argued, and the said Circuit Court of Appeals having rendered its decision and handed down its mandate affirming the said decree with costs taxed in the sum of \$25.

Now, on motion of Haight, Smith, Griffin & Deming, proctors for the bark *Thekla* and the cross libelants Jens Samuelson and B. Olsen, it is

Ordered, adjudged, and decreed, that the mandate of the said Circuit Court of Appeals be filed and that the same be and hereby is made the judgment of this court, and that the final decree entered herein on February 5, 1923, as amended by order dated February 9, 1923, be, and the same hereby is, affirmed with costs in accordance with the said mandate; and it is further

Ordered, adjudged, and decreed that the cross libelants, Jens Samuelson and B. Olsen, as owners of the bark *Thekla*, recover of and from the United States of America and the United States Shipping Board Emergency Fleet Corporation, claimant and stipulators, the sum awarded by the said final decree as amended, to wit, the sum of \$154,837.96, together with interest thereon from February 5, 1923, to date, in the sum of \$18,006.15, together with \$25 costs taxed in the Circuit Court of Appeals, and \$1.10, the cost of entry of this final decree on mandate in this court, amounting in all to the sum of \$172,870.21, with interest thereon from the date of entry of this decree until paid; and it is further

Ordered that unless this decree be satisfied within 10 days after service of a copy thereof with notice of entry on the proctor for the claimant, United States of America, the stipulators for value and costs on the part of said claimant shall cause the engagements of their stipulations to be performed, or show cause within four days or on the first day of jurisdiction thereafter, why execution should not issue against them, their goods, chattels, and lands to satisfy this decree.

JULIAN W. MACK, *U. S. C. J.*